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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 484

VAUGHN C. PAYNE, SR., INDIVIDUALLY, EDITH PRUITT PAYNE AND VAUGHN C. PAYNE, SR., AS NEXT FRIEND OF VAUGHN C. PAYNE, JR., PETITIONERS

v.

GUS F. KOEHLER, DISTRICT DIRECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The order of the District Court dismissing petitioners' action (R. 31-32) is not reported. The opinion of the Court of Appeals (Pet. App. 1-5) dismissing their appeal for lack of jurisdiction is reported at 225 F. 2d 103.

JURISDICTION

The judgment of the Court of Appeals was entered on August 10, 1955. A petition for rehearing and motion to amend notice of appeal was denied on August 26, 1955. The petition for a writ of certiorari was filed on October 24, 1955. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTIONS PRESENTED

1. Whether the court below erred in dismissing petitioners' appeal for lack of jurisdiction under 28 U.S.C., Section 1291, where the appeal was taken from an order denying a motion for rehearing, and no appeal was taken from the order dismissing the action.

2. Whether the District Court erred in holding that Section 7421 of the Internal Revenue Code of 1954 precluded it from entertaining an action for injunction against the administrative collection of federal income taxes where it was alleged that such collection was forbidden by the Federal Constitution and by the Constitution and statutes of the State of Missouri.

STATUTES INVOLVED

The pertinent statutes, 28 U.S.C., Section 1291, and Sections 6334 and 7421 of the Internal Revenue Code of 1954, are set forth in the Appendix, *infra*, pp. 7-8.

STATEMENT

Petitioners brought this action against the District Director of Internal Revenue at St. Louis,

Missouri, seeking to enjoin his administrative collection of income taxes owing from the taxpayer, Vaughn C. Payne, Sr. These taxes are being collected by distraint from his employer, the City of St. Louis. The petition alleged that such collection was prohibited by the Federal Constitution, the Missouri Constitution, and certain Missouri exemption statutes. Irreparable injury to petitioners Edith Pruitt Payne and Vaughn C. Payne, Jr., was alleged on the ground that they were dependent for maintenance and support on the taxpayer's earnings. (R. 1-5.)

Upon motion of the Director (R. 14), the action was dismissed by the District Court in an order dated March 17, 1955 (R. 31-32). Within ten days thereafter, petitioners filed separate motions for a rehearing and to set aside the order of dismissal. (R. 32-35.) On April 13, 1955, the District Court denied these motions. (R. 46.) Thereafter petitioners filed a notice of appeal reading in part as follows (R. 46-47):

> Notice is hereby given that * * * plaintiffs * * * hereby appeal * * * from the order described to-wit:
>
> [Here followed the full text of the District Court's order of April 13, 1955, denying the motions for rehearing and to set aside the order of dismissal.]

The Court of Appeals dismissed the appeal on the Director's motion, holding that it had no juris-

diction under 28 U.S.C., Section 1291, since, as the action had been dismissed by the order of March 17, an appeal from the order of April 13 was not an appeal from a final decision, as required by Section 1291. (Pet. App. 1-5.)

In disposing of the appeal, the Court of Appeals also discussed the merits and found that the action had in any event been properly dismissed, since no extraordinary or exceptional circumstances took the case out of the general rule forbidding injunctions to prevent the administrative collection of taxes. (Pet. App. 4-5.)

ARGUMENT

The Court of Appeals was clearly correct in dismissing petitioner's appeal for want of jurisdiction. But even if this point were more doubtful, there would be no occasion for certiorari. For, as the Court of Appeals went on to discuss in its opinion (Pet. App. 4-5), petitioners' effort to enjoin the federal tax collection process is plainly forbidden by Section 7421 of the Internal Revenue Code of 1954 (Appendix, *infra*, pp. 7-8), continuing a familiar statutory rule long enforced in the decisions of this Court and the lower federal courts [redacted].* Petitioners' attempt to avoid this prohibition by reliance on a state exemption statute is patently unsubstantial.

1. Petitioners took no appeal from the District Court's order of dismissal, the only order from

* The rule was formerly embodied in Section 3653 of the 1939 Code (26 U.S.C., 1952 ed., 3653).

which an appeal would lie. Instead, their notice of appeal (R. 46-47) was directed solely to the District Court's order overruling their motion for rehearing and motion to set aside the order of dismissal. It is settled, however, that, although a motion for rehearing extends the time for appeal, the denial of such a motion is not itself appealable. In so holding, the decision below is in complete conformity with the decisions of this Court. See *Pfister* v. *Finance Corp.*, 317 U.S. 144, 149-150, and cases cited, including the squarely apposite decisions of the court below in *Jones* v. *Thompson*, 128 F. 2d 888, and *Missouri* v. *Todd*, 122 F. 2d 804.

2. In any event, as the court below indicated, the trial court's dismissal of petitioners' suit on the merits was clearly correct. This Court has consistently enforced the rule, now contained in Section 7421 of the Internal Revenue Code of 1954, which prohibits injunctions restraining the assessment or collection of any tax. *E. g.*, *Snyder* v. *Marks*, 109 U.S. 189; *Graham* v. *duPont*, 262 U.S. 234. And petitioners have alleged no circumstances which could conceivably warrant a departure from this rule. Cf. *Hill* v. *Wallace*, 259 U.S. 44, 62. Clearly, the Missouri Constitution and statutes they invoke were not intended, and could not serve if they were, to restrict the tax collection procedure of the Federal Government. Cf. *United States* v. *Summerlin*, 310 U.S. 414. It is equally clear that petitioners' vague references to the due process protection of the Fifth Amendment (Pet. 5, 7, 9) add nothing to their case. The

propriety of the summary procedures for collecting taxes—leaving to the taxpayer the remedies Congress has specified and forbidding the kind of injunctive interference petitioners seek—is too well established to require further argument now. See *Cheatham* v. *United States*, 92 U.S. 85, 88-89; *Murray's Lessee* v. *Hoboken Land and Improvement Co.*, 18 How. 272.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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NOVEMBER, 1955.

APPENDIX

28 U.S.C.:

SEC. 1291 [as amended by Sec. 48 of the Act of October 31, 1951, c. 655, 65 Stat. 710]. FINAL DECISIONS OF DISTRICT COURTS.

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

Internal Revenue Code of 1954:

SEC. 6334. PROPERTY EXEMPT FROM LEVY.

(a) *Enumeration.* — There shall be exempt from levy—

(1) *Wearing Apparel and School Books.* —Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) *Fuel, Provisions, Furniture, and Personal Effects.*—If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $500 in value;

(3) *Books and Tools of a Trade, Business, or Profession.*—So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate $250 in value.

* * *

(c) *No Other Property Exempt.*—Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

(26 U.S.C. 1952 ed., Supp. II, Sec. 6334.)

SEC. 7421. PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTON.

(a) *Tax.*—Except as provided in sections 6212 (a) and (c), and 6213(a), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

* * *

(26 U.S.C. 1952 ed., Supp. II, Sec. 7421.)

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